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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/534,509	03/24/2000	Zenoviy Tkachuk	000152	2421
23850	7590	07/18/2003		
ARMSTRONG, WESTERMAN & HATTORI, LLP 1725 K STREET, NW SUITE 1000 WASHINGTON, DC 20006			EXAMINER CHEN, SHIN LIN	
			ART UNIT 1632	PAPER NUMBER

DATE MAILED: 07/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/534,509	Applicant(s) Zenoviy Tkachuk
	Examiner Shin-Lin Chen	Art Unit 1632
		
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
Period for Reply		
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.		
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 		
Status		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Jun 17, 2003</u>		
2a) <input type="checkbox"/> This action is FINAL. 2b) <input checked="" type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.		
Disposition of Claims		
4) <input checked="" type="checkbox"/> Claim(s) <u>2-6, 8-12, 20-23, 25-32, and 34-45</u> is/are pending in the application.		
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.		
5) <input checked="" type="checkbox"/> Claim(s) <u>2-5, 10-12, 23, 25-32, 34-37, and 39-42</u> is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>6, 8, 9, 20-22, 38, and 43-45</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.		
Application Papers		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. <p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p>		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. <p style="margin-left: 20px;">If approved, corrected drawings are required in reply to this Office action.</p>		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
Priority under 35 U.S.C. §§ 119 and 120		
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).		
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).		
<p style="margin-left: 20px;">*See the attached detailed Office action for a list of the certified copies not received.</p>		
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
Attachment(s)		
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____		

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DETAILED ACTION

Applicant's amendment filed 6-17-03 has been entered. Upon further consideration, the finality of the Official action mailed 7-9-02 (Paper No. 14) has been withdrawn. Claims 1, 13-19, 24, 33 and 46-55 have been canceled. Claims 6, 8-12, 20-23, 25-32 and 34-42 have been amended. Claims 2-6, 8-12, 20-23, 25-32 and 34-45 are pending and under consideration.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 6, 8 and 9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 6 has been amended to read on a method of stabilizing acid-challenged erythrocyte membranes of a mammal by administering yeast total RNA in an amount within a range from 0.1mg to 1g per kg weight of a mammal to said mammal and such subject matter is considered new matter. The specification fails to provide sufficient description to support administering yeast total RNA in an amount within a range from **0.1mg to 1g per kg weight** to a mammal to stabilize acid-challenged erythrocyte membranes of a mammal.

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 20-22, 38 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ayukawa et al., 1971 (US Patent 3,615,654) in view of Robbins et al., 1975 (US Patent 3,914,450).

Claims 20-22, 38 and 43-45 are directed to a pharmaceutical composition comprising total yeast ribonucleic acid and a pharmaceutically acceptable vehicle, carrier, or diluent, wherein said ribonucleic acid comprises more than 14.5%, 15.16%, or 15.49% nitrogen and comprises more than 8.6%, 9.0% or 9.05% phosphorous contents.

Ayukawa teaches preparation of yeast ribonucleic acid from torula yeast and said yeast ribonucleic acid contains 8.5% phosphorous and 15.1% nitrogen contents (column 6, 7). The term "pharmaceutical" does not carry weight in 103(a) rejection. The solution, such as ethanol solution, containing the yeast ribonucleic acid is considered a pharmaceutical acceptable vehicle, carrier, or diluent.

Ayukawa does not specifically teach phosphorous content that is higher than 8.5% or nitrogen content that is higher than 15.1%.

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Robbins teaches determination of RNA content from yeast cells and “The nucleic acid is considered to contain 16.3% nitrogen. Therefore, the RNA content divided by 6.13 gives the nitrogen content of the nucleic acid” (column 4, lines 40-42).

It would have been obvious for one of ordinary skill at the time of the invention to prepare yeast ribonucleic acid having nitrogen content of more than 15.16% or 15.49% and having phosphorous content of more than 8.6%, 9.0% or 9.05% because Ayukawa teaches preparation of yeast ribonucleic acid containing 8.5% phosphorous and 15.1% nitrogen contents and Robbins teaches that the nucleic acid is considered to contain 16.3% nitrogen, which is higher than 15.16% or 15.49%. Further, the nucleotides of ribonucleic acid contain both nitrogen and phosphorous, therefore, the phosphorous content of ribonucleic acid is proportional to its nitrogen content. Since Robbins teaches that the nucleic acid is considered to contain 16.3% nitrogen, it would be obvious for one of ordinary skill at the time of the invention to prepare yeast ribonucleic acid having phosphorous content of more than 8.6%, 9.0% or 9.05%. Thus, it would have been obvious for one of ordinary skill to practice the claimed invention with reasonable expectation of success because of the teachings of Ayukawa and Robbins.

Conclusion

Claims 6, 8, 9, 20-22, 38 and 43-45 are rejected. Claims 2-5, 10-12, 23, 25-32, 34-37 and 39-42 are in condition for allowance.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shin-Lin Chen whose telephone number is (703) 305-1678. The examiner can normally be reached on Monday to Friday from 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Reynolds can be reached on (703) 305-4051. The fax phone number for this group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-0196.



Shin-Lin Chen, Ph.D.